Award No. 5895
Docket No. 5641
2-N&W-CM-'70

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Harold M. Gilden when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION No. 16, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L.-C. I. O. (CARMEN)

NORFOLK AND WESTERN RAILWAY COMPANY

DISPUTE: **Claim of Employes:**

1. That the Carrier violated the Current Agreement as amended on the respective dates of April 22 and 24, 1966, when they improperly furloughed certain Car Repairers, Helper Car Repairers, and Apprentice Car Repairers, ninety-eight (98) of whom were entitled to preservation of employment protection, and whose names, together with the respective dates of furlough and recall, are listed on Exhibit No. 1 attached hereto.

2. That accordingly, the Carrier be required to compensate the employes named in Exhibit No. 1 for all time lost from time furloughed, until time recalled, at the applicable straight-time rate, for their respective crafts.

EMPLOYES' STATEMENT OF FACTS: The aforesaid ninety-eight (98) employes, hereinafter referred to as claimants, are employed by the Norfolk & Western Railway Company, hereinafter referred to as the carrier, at carrier's shops located at Williamson, West Virginia, a point on the carrier, where facilities for the servicing, repairing and rebuilding of cars are maintained. This point is covered by the agreement between the carrier and its employes in the mechanical department, represented by System Federation No. 16 of the Railway Employes' Department, effective September 1, 1949, as subsequently amended, including memorandum of agreement effective October 16, 1964, under which claimants are granted preservation of employment protection.

The carrier issued bulletins furloughing claimants, effective April 22 and 24, 1966, respectively, allegedly due to the miners' strike. There existed at the time a limited coal miners' strike in the area serviced by carrier's trains operating out of Williamson, with a resultant reduction in coal loadings; however, a number of mines continued to operate, as is evidenced by the fact that in the week of the furlough, there were coal loadings of 7,163 cars, not including time freight and perishable cargo cars to be serviced at said shop and terminal.

of these cars were gondola cars which were later programmed through Princeton Shops, the rest of the cars were being held for sale or final determination as to whether they would be repaired or scrapped. It was never the intention of management that these cars be assembled at Williamson for the purpose of being repaired at that point.

Carrier has clearly shown that at the time furloughs were made April 22 and 24, 1966, an emergency did exist due to strike of coal miners in the area. During this emergency, car loadings, the principal source of work at this point, declined drastically, resulting in fewer cars shopped for repairs, fewer cars to be worked in the yards and a greatly reduced number of trains dispatched. Under the circumstances, work was not deferred, it had disappeared and could not be performed; therefore, a reduction in forces was necessary and warranted under the provisions of existing agreements.

It is carrier's further position that the claim as initiated on the property and appealed to your board is erroneous in that the first seven men on the list requested and worked furloughed relief work during the period in question, also one or more individuals listed were sick and not available for work.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Under the language of Section 1 (d) of the January 10, 1962 Agreement, the right to appeal unresolved disputes to an arbitration committee is a permissive rather than a restrictive or mandatory requirement. Neither said provision nor Section 16 of the October 16, 1964 Agreement precludes the Organization from choosing, at its discretion, to process a claim arising under the October 16, 1964 Agreement to this Board. it follows that Carrier's contention is untenable that this Board lacks jurisdiction to adjudicate this case. Accordingly, the request to dismiss is hereby denied.

Turning now to the merits, the record shows that beginning April 11, 1966 and extending through the remainder of that month, some 36,000 coal miners were on strike in mines served by Carrier in Virginia, West Virginia and Kentucky. On April 21, 1966 and again April 23, 1966, (at a time when Carrier's weekly car loadings on the Pocahontas Division had decreased about 66%) notices were posted furloughing designated employees effective April 22 and April 24, 1966, respectively. These furloughs involved employees from all crafts. In addition to Williamson, W. Virginia, furloughs were also made at other Carrier points extending from Norfolk, Va. north and west to Toledo, Ohio.

Although fewer cars were shopped during the span of the strike, a sufficient carmen work force was maintained throughout that period to handle essential car repairs and programmed work. The recall of claimants to work began on April 26, 1966 and continued until may 5, 1966, at which time loadings were almost back to normal.

The record in the case demonstrates conclusively that this is precisely that type of situation, envisioned by Section 19 of the October 16, 1964 Agreement, wherein the Carrier would be absolved from fault for making force reductions. Unquestionably, emergency conditions prevailed during the coal miner's strike; Carrier's operations were suspended in part; and work which would have otherwise been performed by the furloughed employees no longer was available for them. As distinguished from the situations dealt with in Awards 2195, 2196 and 4113 of this Board, the lay-offs in the instant case did not affect all jobs at Williamson, W. Va., covered by the Carmen's labor agreement, and the furloughs were not activated until after the strike had been in progress for about eleven days.

Certainly, during the pendency of a major strike, such as occurred here, fewer cars will be shopped, and the volume of indispensable carmen's tasks will be substantially decreased. The members of the carmen craft who were retained on their jobs during the strike handled light, medium and heavy repairs on shop cars, and also performed programmed work on P&WV cars. Actually, some of the claimants herein either worked furloughed relief or reported off as sick and unavailable when called for those assignments.

So long as the work which would be performed by the furloughed employees disappears and, for the time being, is not available for performance, there is no basis for complaint. The sense of Section 19 is to preclude the delegating to outsiders the work which, but for the furloughs, would have been assigned to employees in the carman's craft. That did not occur here.

It is not required of the Carrier to prove that no work exists anywhere on the property which conceivably could be performed were the Carrier inclined to motivate such activity. In these circumstances, the question of whether or not there is a backlog of carmen's work, awaiting the resumption or full scale normal operations, is not a relevent consideration. See Award No. 2060, NRAB, Fourth Division.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 17th day of April, 1970.

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